

27 March 1974

MEMORANDUM FOR THE RECORD

SUBJECT: Freedom of Information Bills--Status Report  
H.R. 12471, S. 2543

1. In a meeting with [ ] the following actions were agreed to:

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a. [ ]--will provide his contact in Justice with the language proposed by the Agency as an amendment to the court review section of the bills. (Justice will push this as their first option and will fall back to a second option described in detail in [ ] memorandum of this date.)

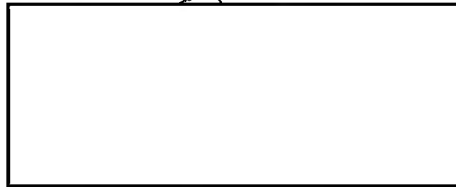
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b. [ ]--will contact AEC and NSA to determine their views on the bill, specifically the court review section. (House Report 93-876 recognizes that existing exemption 552(b)(3) "specifically exempted from disclosure by statute" features a "born classified" concept.) In common, AEC, NSA, and CIA have a statutory basis for classification. Although unlike AEC and NSA, we may not be able to argue that with respect to intelligence sources and methods, there is not administrative discretion, we are like them and unique among other Federal agencies because of this statutory basis for protecting intelligence sources and methods. If AEC and NSA believe, as we think they would have reasonable cause to believe, that the proposed legislation (despite the legislative history in the House Committee report) could make Restricted Data or Comint vulnerable to a possibility of court review, then they may be willing to march in lockstep with us for either specific exempting language from the court review provision which would exclude court review in the case of Comint, Restricted Data and information classified by CIA to protect intelligence sources and methods from unauthorized disclosure. Failing this, we may get legislative history to this effect, which should be helpful in the case of a court test. Finally, if the argument carries weight, we will have enlarged the area of members who would support such a proposition, i. e., those on the Joint Committee on Atomic Energy and the Armed Services Committees, on the basis that

the proposed legislation conflicts with existing law which falls under the jurisdiction of those Committees.

2. In view of the momentum behind the proposed legislation, it was agreed that it was imperative to move as quickly as possible on both of these tracks, i.e., cooperation with Justice, by providing them our proposed language and with AEC and NSA to enlist support in distinguishing and exempting from the court review and related provisions information "born classified" as a result of statute.



Deputy Legislative Counsel

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